

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Darrin D. Holston, #288828,	)	
	)	
Petitioner,	)	C.A. No. 9:17-899-HMH-BM
	)	
vs.	)	<b>OPINION &amp; ORDER</b>
	)	
Leroy Cartledge,	)	
	)	
Respondent.	)	

This matter is before the court on Darrin D. Holston’s (“Holston”) untimely objections to the Report and Recommendation of the magistrate judge. For the reasons set forth below, the court adopts the Report and Recommendation.

On April 26, 2018, Magistrate Judge Bristow Marchant recommended granting Respondent’s motion for summary judgment and dismissing Holston’s 28 U.S.C. § 2254 petition. (R&R, ECF No. 44.) Objections to the Report and Recommendation were due by May 11, 2018. Holston filed objections to the Report and Recommendation, which he dated May 22, 2018, and were stamped received by the prison mailroom on May 22, 2018.<sup>1</sup> (Objs. 3, Ex.1 (Env.), ECF Nos. 51 & 51-1.) Respondent filed a reply to the objections on June 12, 2018. (Reply, ECF No. 52.) Even accepting the date on the objections, the objections are untimely. See Djenasevic v. U.S. Dep’t of Justice, No. 15-6076, 604 Fed. App’x 328, 328 (Mem.) (4th Cir. Jun. 16, 2015) (unpublished) (holding that, under the prison mailbox rule, the date the inmate delivers a legal document to prison officials for mailing, rather than the date prison officials process the deposited mail, is the date of filing). “[I]n the absence of a timely filed objection, a

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<sup>1</sup> Houston v. Lack, 487 U.S. 266, 276 (1988).

district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Holston gives no excuse or reason for his tardiness, nor does the court find any cause for his delay. Accordingly, Holston waived this court’s review of that order. See Ballard v. Carlson, 882 F.2d 93, 96 (4th Cir. 1989) (“Pro se litigants . . . are subject to the time requirements and respect for court orders without which effective judicial administration would be impossible.”); see also, Taylor v. Gainey, No. 06-6940, 2006 WL 2871206, at \*1 (4th Cir. Oct. 10, 2006) (unpublished) (“The timely filing of specific objections to a magistrate judge’s recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance.”). After a thorough review of the Report and Recommendation and the record in this case, the court finds no clear error. Therefore, the court adopts Magistrate Judge Marchant’s Report and Recommendation and incorporates it herein.

Further, on July 6, 2018, more than one month after the deadline for objections to the Report and Recommendation, Holston again moves to amend his petition “pursuant to Martinez v. Ryan.” (Sec. Mot. Amend, ECF No. 53.) Respondent filed a response in opposition to Holston’s motion to amend on July 17, 2018. (Resp. Opp’n Sec. Mot. Amend, ECF No. 57.) Holston provides no factual basis to support his proposed amendment and having adopted the magistrate judge’s Report and Recommendation to grant summary judgment, the motion to amend is futile. See Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986) (“leave to

amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.”). Therefore, Holston’s motion is denied.

In addition, Holston moves to “renew his previous Motion to Stay.” (Sec. Mot. Stay, ECF No. 54.) Respondent filed a response in opposition to Holston’s motion to stay on July 17, 2018. (Resp. Opp’n Mot. Stay, ECF No. 56.) The court previously denied Holston’s first motion to stay and adopted the magistrate judge’s Report and Recommendation because Holston failed to set forth specific facts and circumstances to show good cause to stay the case in accordance with Rhines v. Weber, 544 U.S. 269 (2005). (Dec. 20, 2017 Order, ECF No. 31 & R&R 3-4, ECF No. 27.) There is no basis for the court to grant a stay in this case. Based on the foregoing, Holston’s motion to stay is denied.

It is therefore

**ORDERED** that Respondent’s motion for summary judgment, docket number 17, is granted. It is further

**ORDERED** that Holston’s motion to stay, docket number 54, is denied. It is further

**ORDERED** that Holson’s motion to amend, docket number 53, is denied.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
July 17, 2018

### **NOTICE OF RIGHT TO APPEAL**

The Movant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.